

PT 96-24
Tax Type: PROPERTY TAX
Issue: Religious Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

MESSIAH-ST. BARTHOLOMEW)	
EPISCOPAL CHURCH)	
Applicant)	
v.)	Docket # 93-16-1207
)	
THE DEPARTMENT OF REVENUE)	Parcel Index # 20-35-229-014
OF THE STATE OF ILLINOIS)	

RECOMMENDATION FOR DISPOSITION

Appearances: Ms. Linda S. Smith appeared on behalf of Messiah-St. Bartholomew Episcopal Church (hereinafter referred to as the "Applicant").

Synopsis:

The hearing in this matter was held at 100 West Randolph Street, Chicago, Illinois, on December 20, 1995, to determine whether the first floor of the former rectory and the garage located on Cook County parcel No. 20-35-229-014 should be exempt from real estate tax for the 1993 assessment year.

Father Darryl F. James, rector of the applicant, testified on behalf of the applicant.

The issue in this matter is whether the first floor of the former rectory and the garage and the land on which it stands, located on this parcel were used for primarily religious purposes during the 1993 assessment year. Following the submission of all of the evidence and a review of the record, it is determined that the first floor of the former rectory was used for residential purposes and not primarily religious purposes during the 1993 assessment year. It is also determined that the garage was used for both exempt and nonexempt purposes, and the nonexempt use was the primary use.

Findings of Fact:

1. The position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that the first floor of the former rectory and the garage did not qualify for exemption for exemption for the 1993 assessment year, was established by the admission in evidence of Department's Exhibits 1 through 5B.

2. On May 5, 1994, the Cook County Board of Appeals forwarded an Application for Property Tax Exemption To Board of Appeals, concerning this parcel for the 1993 assessment year. (Dept. Ex. No. 1)

3. On December 15, 1994, the Department notified the applicant that it was approving the exemption of this parcel and the buildings thereon, except for the first floor of the former rectory, the garage, and the land on which the garage was located, for the 1993 assessment year. (Dept. Ex. No. 2)

4. The applicant's attorney then requested a formal hearing. (Dept. Ex. No. 3)

5. The hearing held in this matter on December 20, 1995, was held pursuant to that request.

6. The applicant acquired this parcel pursuant to a quit claim deed dated October 25, 1990. (Dept. Ex. No. 1C)

7. This parcel is improved with three buildings, the church, the former rectory, and a garage. (Dept. Ex. No. 1T)

8. Since the Department's initial determination in this matter exempted this parcel, the church, and the basement and the attic of the former rectory, I find that the Department has determined that the applicant owned this parcel during the 1993 assessment year and that the applicant is a religious organization. (Dept. Ex. No. 3)

9. During the 1993 assessment year the first floor of the former rectory was used by Mr. Albert McDonald, the caretaker of the applicant, as his residence. (Tr. p. 10)

10. The caretaker does not pay rent to the applicant but does pay the utilities for the first floor. (Tr. p. 11)

11. The caretaker's only duty for the applicant is to be in his residence in the evening and to check on the buildings as he goes in and out. If encounters any suspicious characters or believes there may be or has been a break in, he is instructed either to call the rector or the senior warden. (Tr. pp. 18 & 19)

12. The applicant also employs a sexton whose duty is to clean the church. (Tr. p. 18)

13. Mr. McDonald, during 1993 was also employed as a school bus driver. He leaves early in the morning and returns during the midmorning and the leaves again about 2:00 P. M. and returns about 5:00 P. M., during the school year. (Tr. p. 23)

14. The garage is a one car garage and the caretaker parks his car there. There was also testimony that the applicant does occasionally store things in the garage. (Tr. pp. 12 & 13)

15. Based on the foregoing I find that the caretaker did not perform any religious duties during 1993.

16. I also find that no evidence was presented that the caretaker performed any religious duties in the area he occupied as a residence on the first floor of the former rectory.

17. Finally, I find that while there was evidence that some church items were stored in the one car garage, the primary use of that garage was for the caretaker to park his personal automobile.

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and

horticultural societies, and for school, religious, cemetery and charitable purposes.

35 **ILCS** 205/19.2 exempts certain property from taxation, in part as follows:

All property used exclusively for religious purposes, or used exclusively for school and religious purposes,...and not leased or otherwise used with a view to profit,....

Concerning whether the caretaker's quarters on the first floor of the former rectory qualified for exemption, in the case of MacMurray College v. Wright, 38 Ill.2d 272 (1967), the Supreme Court considered whether or not faculty and staff housing owned by a college, was used for school purposes. In that case, the Court applied a two-part test. First, were the residents of the houses required to live in their residences because of their exempt duties for the college, or were they required to, or did they perform any of their exempt duties there?

The Courts have more recently applied the MacMurray tests to caretakers' residences in Benedictine Sisters of the Sacred Heart v. Department of Revenue, 155 Ill.App.3d 325 (2nd Dist. 1987); Lutheran Child and Family Services of Illinois v. Department of Revenue, 160 Ill.App.3d 420 (2nd Dist. 1987); and also Cantigny Trust v. Department of Revenue, 171 Ill.App.3d 1082 (2nd Dist. 1988). In the Benedictine Sisters case, the Court considered whether or not three caretakers' residences on the grounds of a convent qualified for exemption. The Court applied the MacMurray tests, and at page 329, concluded as follows:

Obviously the Caretaker's residences here do not meet either test, as the caretakers are not performing any religious duties, and as no religious activities are carried on in the residences. (Emphasis supplied)

In this case the foregoing reasoning is clearly applicable to the first floor of the former rectory occupied by the caretaker, since he was not engaged in any religious activities, nor was it established that he performed any of his duties there.

Concerning the one car garage on this parcel, in the situation where the property as a whole was used for both exempt and nonexempt purposes, the

property will qualify for exemption only if the exempt use is the primary use, and the nonexempt used is only incidental. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971); and MacMurray College v. Wright, 38 Ill.2d 272 (1967). I have previously found that the primary use of this garage during the 1993 assessment year was for the caretaker to park is personal automobile.

I consequently conclude, as a matter of law, that Cook County parcel No. 20-35-229-014 qualified for exemption from real estate taxation for the 1993 assessment year, except for the first floor of the former rectory and the garage and the land on which the garage was located, which were not being used for religious purposes during the 1993 assessment year.

I therefore recommend that Cook County parcel No. 20-35-229-014 should be exempt from real estate taxation for the 1993 assessment year, except for the first floor of the former rectory and the garage and the land on which the garage is located.

I further recommend that the first floor of the former rectory and the garage and the land on which the garage is located should remain on the tax rolls and be assessed to the applicant for the 1993 assessment year.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
August 7, 1996